

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 651 of 1986

For Approval and Signature:

HON'BLE MR.JUSTICE R.P.DHOLAKIA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

STATE OF GUJARAT

Versus

VANIYA DEVJI MOTI

Appearance:

1. Criminal Appeal No. 651 of 1986
Mr.I.M.Pandya, learned A.P.P. for Appellant
MRS SHILPA J UNWALLA for Respondent No. 1-2
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CORAM : HON'BLE MR.JUSTICE R.P.DHOLAKIA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 14/07/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE SHARAD D.DAVE)

#. This appeal has been preferred by the State under Section 378 of the Criminal Procedure Code, 1973 against the order of acquittal passed by the learned Additional Sessions Judge, Surendranagar in Sessions Case no. 61 of 1984 on 28.02.1986.

#. The short facts of the case are that on 01.08.1984, at about 12.45 p.m. complainant Soma Bhana Rathod and Jivan Moti Rathod were going on bicycle towards Delhi Darwaja from the four roads crossing near Jakat Naka no.2, the accused nos.1 & 2 i.e. Vaniya Moti Premji and Vaniya Kesha Moti respectively came on scooter and dashed with the cycle. Altercations started between them and the accused nos. 1 & 2 took out knives and injured Jivan Moti Rathod and when Soma Bhana Rathod came to the rescue, he also sustained injuries. According to the prosecution story, accused nos. 3 & 4 i.e.Vaniya Devji Moti and Vaniya Soma Moti respectively (who are the present respondents) were also having knives in their hands and instigating accused nos. 1 & 2. Thereafter, the injured were taken to Dhrangdhra hospital where Soma Bhana Rathod gave complaint before the P.S.I.Patel who sent the complaint to the Police Station and P.S.O. of the City Police Station registered it at No.133 of 1984. On the side of the accused, Ramji Kuber lodged the complaint about the said incident which was registered at No.135 of 1984. P.S.I.Shri Vaghela took up the investigation of both the cases, recorded the statements of concerned witnesses, recorded the panchanama of scene of offence, attached the muddammal in presence of panchas, sent the relevant muddammal to Chemical Analyser and upon sufficient evidence worth filing the chargesheet against the accused, chargesheet against the accused was filed before J.M.F.C., Dhrangdhra for the offences punishable under Sections 307, 326 and 324 read with Section 114 of the Indian Penal Code. As the offence punishable under Section 307 of the Indian Penal Code is exclusively triable by the Court of Sessions, the case was committed to the Sessions Court, Surendranagar and charge was framed against the accused. As the accused pleaded not guilty and prayed for trial, the prosecution examined oral witnesses and also placed reliance on the documents. On completion of the same, further statement of the accused under Section 313 of the Criminal Procedure Code was recorded and after hearing the learned counsel for the respective parties, accused nos. 1 & 2 were convicted and sentenced whereas accused nos. 3 & 4 (the present respondents) were acquitted of all the

charges, against which acquittal, the present appeal is preferred by the State.

#. Heard learned A.P.P. for the State Shri Pandya. Mr. Pandya has mainly taken us through the oral evidence of Bhopabhai Ukabhai P.W. 5 at Exh.32. But his evidence shows that he has not supported the say of the prosecution and, therefore, prosecution has also sought permission to contradict him and questions to that effect have been asked but nothing has come out to involve the accused in the crime in question. In the same way, he has also taken us through the oral evidence of Kasambhai Imambhai - P.W. 7 at Exh.36. He has also not supported the say of the prosecution. He has also been permitted to contradict but nothing has come out to involve the accused in the crime in question and, therefore, his evidence is also not required to be considered more. Learned A.P.P. has also taken us through the oral evidence of Somabhai Bhanabhai Rathod P.W. 8 at Exh. 39 and according to the prosecution, he is eye witness and at the relevant time, he was along with Jivanbhai Motibhai Rathod. At that time, the accused Moti Premji and Kesha Moti came from opposite direction and they dashed scooter with the bicycle of Jivan Moti, as a result of that, both fell down and thereafter Kesha Moti took out knife and Premji Vaniya took out knife from his portfolio, they dashed towards Jivan Moti and according to witness he has given knife blows on various parts of the body of Jivan Moti including forehead, head and stomach and according to him, thereafter, police came there and arrested them. So, in short, he has involved two persons i.e. Moti Premji and Kesha Moti. He has automatically admitted in his cross-examination in para 7 that at the time of incident, he has not seen accused no. 3 Devji Moti Vaniya and accused no. 4 Soma Moti Vaniya. So, according to his evidence, he has not involved the present respondents-accused in the crime in question. He has admitted in cross-examination that various civil as well as criminal disputes were going between both the groups. In the same way, he has also taken us through the oral evidence of Shankarbhai Shivabhai Rathod - P.W. 11 at exh. 47. According to prosecution, he is also witness to incident but it shows that he is a chance witness and he has tried to involve accused nos. 3 and 4 in the crime in question, but that too only to the extent that they were encouraging the other accused. In the same way, he has taken us through the oral evidence of Jivanbhai Motibhai - P.W. 12 at Exh.48. He also does not involve the present respondents in the crime in question. He has also not involved anybody in the crime.

#. The evidences upon which reliance has been placed by the prosecution are such that they are witnesses of Vaniya group and also the facts which have been established during the course of evidence that there were disputes going on between the parties since long and various criminal as well as civil disputes were going between the parties. Apart from it, even the judgment which has been delivered by the court below is a well-reasoned judgment wherein also he has discussed each and every aspect of the matter and also relied on the evidence of the prosecution in detail and after considering the evidence of Bhopabhai Ukabhai, Kasambhai Imambhai, Somabhai Bhanabhai Rathod, Shankarbhai Shivabhai Rathod, Jivanbhai Motibhai etc. came to the above referred conclusion and acquitted the respondents original accused nos. 3 and 4 and convicted the original accused nos. 1 and 2. The accused who have been convicted by the learned Additional Sessions Judge have not preferred any appeal against that conviction. Only the State has preferred the present appeal but looking to the facts and circumstances of the case and also considering the oral as well as documentary evidence on record, we are of the opinion that the judgment delivered by the court below is just and proper and while doing so, he has considered all aspects of the matter and more particularly, evidence on record shows that prosecution has failed to prove the case against the original accused nos. 3 and 4. Simply the two witnesses have tried to involve them only to the extent that they came there at the relevant time, except that there is no other evidence on record.

#. In view of the above facts and circumstances, this appeal requires to be dismissed and accordingly it is dismissed.

(R.P.DHOLAKIA, J)

(SHARAD D DAVE, J)

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